

109TH CONGRESS
1ST SESSION

S. _____

To regulate information brokers and protect individual rights with respect
to personally identifiable information.

IN THE SENATE OF THE UNITED STATES

Mr. NELSON of Florida introduced the following bill; which was read twice and
referred to the Committee on _____

A BILL

To regulate information brokers and protect individual rights
with respect to personally identifiable information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Information Protection
5 and Security Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Entities commonly known as “information
9 brokers” have created up to several billion personal
10 records on individuals.

1 (2) Information made available by information
2 brokers is used in the determination of opportunities
3 for credit, employment, housing, insurance, means of
4 travel, and other commercial decisions, and must
5 therefore be as accurate, transparent to the indi-
6 vidual, and secure as possible. Inaccurate informa-
7 tion pertaining to an individual that is made avail-
8 able by an information broker may significantly
9 interfere with the individual's economic opportuni-
10 ties. For these reasons, there is a vital need to en-
11 sure that information brokers exercise their impor-
12 tant responsibilities with fairness, impartiality, accu-
13 racy, and respect for individuals' rights to privacy
14 and security, and that information brokers properly
15 safeguard individuals' personally identifiable infor-
16 mation.

17 (3) In 2004, an identity theft operation improp-
18 erly gained access to hundreds of thousands of indi-
19 vidual profiles maintained by one large information
20 broker. Many of these individuals have and will be-
21 come victims of identity theft. The full extent of this
22 incident will not be known for years.

23 (4) Identity thieves illegally exploit information
24 technology to take advantage of innocent individuals.
25 Identity thieves typically steal individuals' names,

1 addresses, telephone numbers, social security num-
2 bers, bank account information, and personal finan-
3 cial and medical data. Due to identity thieves mis-
4 using this personal information, some individuals are
5 denied jobs, faced with debts that are not their own,
6 and arrested for crimes they did not commit.

7 (5) According to the Federal Trade Commis-
8 sion, 10,000,000 Americans were affected by iden-
9 tity theft in 2004, and the problem is growing worse.
10 Identity theft is now the most common fraud per-
11 petrated on individuals. In 2004, identity theft ac-
12 counted for 39 percent of consumer fraud com-
13 plaints filed with the Federal Trade Commission.

14 (6) According to a survey cited by the Federal
15 Trade Commission, identity theft cost the United
16 States \$52,600,000,000 in 2004. Both individuals
17 and businesses bear this heavy financial burden.

18 (7) The increasing power of computers and in-
19 formation technology has greatly magnified the risk
20 to individual privacy that can occur from any collec-
21 tion, maintenance, use, or dissemination of person-
22 ally identifiable information, as well as the number
23 of individuals who can be harmed.

24 (8) There is a clear difference between a com-
25 pilation of personally identifiable information and

1 the compilation's component parts. Even for infor-
2 mation contained in public records, items of data
3 that appear in widely scattered sources are different
4 from the collection and assembly of that information
5 into databases, reports, or profiles. The interest in
6 maintaining the privacy and security of such data-
7 bases has always been, and will continue to be, very
8 high.

9 (9) In order to protect the privacy and security
10 of individuals whose personally identifiable informa-
11 tion resides in systems maintained by information
12 brokers, it is necessary and proper for Congress to
13 regulate the collection, maintenance, use, and dis-
14 semination of such information by information bro-
15 kers by adopting a framework of fair information
16 principles. It is the policy of Congress that informa-
17 tion brokers have an affirmative and continuing obli-
18 gation to protect the privacy and security of an indi-
19 vidual's personally identifiable information.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to regulate the narrow category of business
22 entities commonly known as “information brokers”,
23 but not to extend the regulations to businesses other
24 than information broker businesses, or to weaken or

1 alter the protections provided by other applicable
2 laws;

3 (2) to protect individual rights in relation to in-
4 formation brokers; and

5 (3) to ensure that information brokers compete
6 fairly in the processing and sale of personally identi-
7 fiable information.

8 **SEC. 3. REGULATION BY FEDERAL TRADE COMMISSION.**

9 (a) REGULATIONS.—

10 (1) IN GENERAL.—Not later than 6 months
11 after the date of enactment of this Act, the Federal
12 Trade Commission (in this Act referred to as “the
13 Commission”) shall promulgate regulations with re-
14 spect to the conduct of information brokers and the
15 protection of personally identifiable information held
16 by such brokers.

17 (2) CONTENT OF REGULATIONS.—The regula-
18 tions promulgated under paragraph (1) shall include
19 rules—

20 (A) requiring that procedures for the col-
21 lection and maintenance of data guarantee
22 maximum possible accuracy of personally identi-
23 fiable information held by any information
24 broker;

1 (B) allowing an individual the right to ob-
2 tain disclosure of all personally identifiable in-
3 formation pertaining to the individual held by
4 an information broker, and to be informed of
5 the identity of each entity that procured any
6 personally identifiable information from the
7 broker;

8 (C) allowing individuals the right to re-
9 quest and receive prompt correction of errors in
10 personally identifiable information held by in-
11 formation brokers;

12 (D) requiring information brokers to safe-
13 guard and protect the confidentiality of person-
14 ally identifiable information, appropriate to the
15 nature and type of information involved;

16 (E) requiring information brokers to au-
17 thenticate users before allowing access to per-
18 sonally identifiable information, and requiring
19 that each use of personal information is em-
20 ployed only for a lawful purpose;

21 (F) requiring procedures to be established
22 to prevent and detect fraudulent, unlawful, or
23 unauthorized access, use, or disclosure of per-
24 sonally identifiable information held by an in-
25 formation broker, and to mitigate any potential

1 harm to individuals from threats to the privacy
2 or security of such information;

3 (G) requiring information brokers to estab-
4 lish and maintain procedures that track users'
5 access to personally identifiable information
6 held by the broker, and the lawful purpose for
7 which each access was made; and

8 (H) prohibiting information brokers from
9 engaging in activities that fail to comply with
10 the Commission's regulations.

11 (b) DEFINITIONS.—In this section:

12 (1) INFORMATION BROKER.—

13 (A) IN GENERAL.—The term “information
14 broker” means a commercial entity whose busi-
15 ness is to collect, assemble, or maintain person-
16 ally identifiable information for the sale or
17 transmission of such information or the provi-
18 sion of access to such information to any third
19 party, whether such collection, assembly, or
20 maintenance of personally identifiable informa-
21 tion is performed by the information broker di-
22 rectly, or by contract or subcontract with any
23 other entity.

24 (B) EXEMPTIONS.—The Commission, in
25 promulgating regulations under subsection (a),

1 may exempt any commercial entity from such
2 regulations, in whole or in part, if the Commis-
3 sion determines that granting such an exemp-
4 tion is in the public interest, consistent with the
5 purposes of this Act, and if the entity's collec-
6 tion, assembly, and maintenance of personally
7 identifiable information is only incidental to the
8 entity's primary business.

9 (2) PERSONALLY IDENTIFIABLE INFORMA-
10 TION.—The term “personally identifiable informa-
11 tion” means any personal information, as deter-
12 mined by the Commission, which may be used to
13 identify a person or cause harm to such person.

14 **SEC. 4. ENFORCEMENT.**

15 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
16 SION.—

17 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
18 TICES.—A violation of a regulation promulgated
19 under section 2 shall be treated as a violation of a
20 regulation under section 18(a)(1)(B) of the Federal
21 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) re-
22 garding unfair or deceptive acts or practices.

23 (2) POWERS OF COMMISSION.—The Commis-
24 sion shall enforce the regulations promulgated under
25 section 2 in the same manner, by the same means,

1 and with the same jurisdiction, powers, and duties
2 as though all applicable terms and provisions of the
3 Federal Trade Commission Act (15 U.S.C. 41 et
4 seq.) were incorporated into and made a part of this
5 Act. Any person who violates such regulations shall
6 be subject to the penalties and entitled to the privi-
7 leges and immunities provided in that Act. Nothing
8 in this Act shall be construed to limit the authority
9 of the Commission under any other provision of law.

10 (b) ACTIONS BY STATES.—

11 (1) CIVIL ACTIONS.—In any case in which the
12 attorney general of a State has reason to believe
13 that an interest of the residents of that State has
14 been or is threatened or adversely affected by an act
15 or practice that violates any regulation of the Com-
16 mission promulgated under section 2, the State may
17 bring a civil action on behalf of the residents of the
18 State in a district court of the United States of ap-
19 propriate jurisdiction, or any other court of com-
20 petent jurisdiction, to—

21 (A) enjoin that act or practice;

22 (B) enforce compliance with the regulation;

23 (C) obtain damages, restitution, or other
24 compensation on behalf of residents of the
25 State; or

1 (D) obtain such other legal and equitable
2 relief as the court may consider to be appro-
3 priate.

4 (2) NOTICE.—Before filing an action under this
5 subsection, the attorney general of the State involved
6 shall provide to the Commission and to the Attorney
7 General a written notice of that action and a copy
8 of the complaint for that action. If the State attor-
9 ney general determines that it is not feasible to pro-
10 vide the notice described in this subparagraph before
11 the filing of the action, the State attorney general
12 shall provide the written notice and the copy of the
13 complaint to the Commission and to the Attorney
14 General as soon after the filing of the complaint as
15 practicable.

16 (3) COMMISSION AND ATTORNEY GENERAL AU-
17 THORITY.—On receiving notice under paragraph (2),
18 the Commission and the Attorney General each shall
19 have the right—

20 (A) to move to stay the action, pending the
21 final disposition of a pending Federal matter as
22 described in paragraph (4);

23 (B) to intervene in an action under para-
24 graph (1); and

25 (C) to file petitions for appeal.

1 (4) PENDING CRIMINAL PROCEEDINGS.—If the
2 Attorney General has instituted a criminal pro-
3 ceeding or the Commission has instituted a civil ac-
4 tion for a violation of this Act or any regulations
5 thereunder, no State may, during the pendency of
6 such proceeding or action, bring an action under this
7 subsection against any defendant named in the
8 criminal proceeding or civil action for any violation
9 that is alleged in that proceeding or action.

10 (5) RULE OF CONSTRUCTION.—For purposes of
11 bringing any civil action under paragraph (1), noth-
12 ing in this Act shall be construed to prevent an at-
13 torney general of a State from exercising the powers
14 conferred on the attorney general by the laws of that
15 State to conduct investigations, administer oaths
16 and affirmations, or compel the attendance of wit-
17 nesses or the production of documentary and other
18 evidence.

19 (c) PRIVATE RIGHT OF ACTION.—

20 (1) IN GENERAL.—Any individual injured by an
21 act in violation of the regulations promulgated under
22 section 2, if otherwise permitted by the laws or rules
23 of the court of a State, bring in an appropriate court
24 of that State—

25 (A) an action to enjoin such violation;

1 (B) an action to recover for actual mone-
2 tary loss from such a violation, or to receive up
3 to \$1000 in damages for each such violation,
4 whichever is greater; or

5 (C) both such actions.

6 (2) LIMITATION.—An action may be com-
7 menced under this subsection within 2 years after
8 the date on which the alleged violation occurred, ex-
9 cept that where a defendant has materially and will-
10 fully misrepresented or disclosed any information
11 under this Act or the regulations promulgated pur-
12 suant to this Act and the information so misrepre-
13 sented or disclosed is material to the establishment
14 of the defendant's liability under this Act or such
15 regulations, the action may be brought by the indi-
16 vidual under paragraph (1) at any time within 3
17 years after discovery by the individual of the mis-
18 representation or disclosure.

19 (3) NONEXCLUSIVE REMEDY.—The remedy pro-
20 vided under this subsection shall be in addition to
21 any other remedies available to the individual.

22 **SEC. 5. RELATION TO OTHER LAWS.**

23 (a) FAIR CREDIT REPORTING ACT.—Nothing in this
24 Act or the regulations promulgated under this Act shall
25 be construed to modify, limit or supersede the operation

1 of the Fair Credit Reporting Act. A person or entity sub-
2 ject to the Fair Credit Reporting Act shall comply with
3 that Act as well as with this Act and the regulations pro-
4 mulgated under this Act. To the extent that there is any
5 conflict between the Fair Credit Reporting Act and this
6 Act or such regulations, the Act that affords an individual
7 greater protection shall apply. Multiple requirements with
8 respect to the same information, transaction, or individual
9 shall not be considered a conflict.

10 (b) STATE LAWS.—This Act and the regulations pro-
11 mulgated under this Act shall not be construed as super-
12 seding, altering, or affecting any statute, regulation,
13 order, or interpretation in effect in any State, except to
14 the extent that such statute, regulation, order, or interpre-
15 tation is inconsistent with the provisions of this Act or
16 the regulations promulgated under this Act, and then only
17 to the extent of the inconsistency. For purposes of this
18 section, a State statute, regulation, order, or interpreta-
19 tion shall not be considered inconsistent with the provi-
20 sions of this Act or the regulations promulgated under this
21 Act if the protection such statute, regulation, order, or in-
22 terpretation affords any person is greater than the protec-
23 tion under this Act or the regulations promulgated under
24 this Act.

1 **SEC. 6. REPORT.**

2 Not later than 12 months after the issuance of the
3 regulations required by section 2, the Commission shall
4 transmit to Congress a report on the information broker-
5 age industry and its impact on the privacy of personally
6 identifiable information. Such report shall describe the
7 regulations promulgated pursuant to this Act, compliance
8 with such regulations by the information brokerage indus-
9 try, and any recommendations by the Commission for ad-
10 ditional measures (including any necessary legislation) to
11 ensure the privacy of personally identifiable information.